

information about individuals to ensure that the Privacy Act of 1974 is complied with.

(8) Establish administrative systems in OSD Component organizations to comply with the procedures listed in this part and DoD 5400.11-R.

(9) Coordinate with the Office of the General Counsel (OGC) on all proposed denials of access to records.

(10) Provide justification to the ASD(PA) when access to a record is denied in whole or in part.

(11) Provide the record to the ASD(PA) when the initial denial of a request for access to such record has been appealed by the requester, or at the time of initial denial when appeal seems likely.

(12) Maintain an accurate account of the actions resulting in a denial for access to a record or for the correction of a record. This account should be maintained so that it can be readily certified as the complete record of proceedings if litigation occurs.

(13) Ensure that all personnel who either have access to the system of records, or who are engaged in developing or supervising procedures for handling records in the system, are aware of their responsibilities for protecting personal information as established in the Privacy Act and DoD 5400.11-R.

(14) Forward all requests for access to records received directly from an individual to the ASD(PA) for appropriate suspense control and recording.

(15) Provide ASD(PA) with a copy of the requested record when the request is granted.

(f) The Director for Space Management and Services (SM&S), WHS, shall:

Upon request of the OSD Records Administrator, provide the necessary automated services through the OSD support system for publishing of data in the FEDERAL REGISTER as required by the Privacy Act of 1974.

(g) The Requester is responsible for:

(1) Submitting a request for access to a record or information, in person or in writing, to the Directorate for Freedom of Information and Security Review, (DFOI/SR), OASD(PA), Room 2C757, Pentagon, Washington, D.C. 20301-1155. The Requester must also:

(i) Establish his or her identity as outlined in DoD 5400.11-R.

(ii) Describe the record sought, and provide sufficient information to enable the material to be located (e.g., identification of system or records, approximate date it was initiated, originating organization, and type of document).

(iii) Comply with procedures provided in DoD 5400.11-R for inspecting and/or obtaining copies of requested records.

(2) Submitting a written request to amend the record to the system manager or to the office designated in the system notice.

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#### §311.6 Procedures.

(a) *Publication of Notice in the FEDERAL REGISTER.* (1) A notice shall be published in the FEDERAL REGISTER of any record system meeting the definition of a system of records defined in DoD 5400.11-R.

(2) Regarding new or revised records systems, each OSD Component shall provide the DA&M with 90 days advance notice of any anticipated new or revised system of records. This material shall be submitted to the Office of Management and Budget (OMB) and to Congress at least 60 days before use and to the FEDERAL REGISTER at least 30 days before being put into use, in order to provide an opportunity for interested persons to submit written data, views, or arguments to the OSD Components. Instructions on content and preparation are outlined in DoD Regulation 5400.11-R.

(b) *Access to information on Records Systems.* (1) Upon request, and as provided by the Privacy Act, records shall be disclosed only to the individual they pertain to and under whose individual name or identifier they are filed, unless exempted by provisions stated in DoD 5400.11-R.

(2) There is no requirement under the Privacy Act of 1974 that a record be created or that an individual be given access to records that are not retrieved by name or other individual identifier.

(3) Granting access to a record containing personal information shall not be conditioned upon any requirement that the individual state a reason or

otherwise justify the need to gain access.

(4) No verification of identity shall be required of an individual seeking access to records that are otherwise available to the public.

(5) Individuals shall not be denied access to a record in a system of records pertaining to themselves because those records are exempted from disclosure under DoD 5400.7-R. This regulation states that "an exempted record shall be made available upon request of any individual when, in the judgment of the releasing Component or higher authority, no significant, legitimate, governmental purpose would be served by withholding it under an applicable exemption."

(6) Individuals shall not be denied access to their records for refusing to disclose their Social Security Numbers (SSNs), unless disclosure of the SSN is required by statute, by regulation adopted before January 1, 1975, or if the record's filing identifier and only means of retrieval is by SSN.

(7) Any individual may request access to a record pertaining to him or her, in person or by mail, in accordance with the procedures outlined in paragraph (b)(8) of this section.

(8) Information necessary to identify a record is: the individual's name, date of birth, place of birth, identification of the records system as listed in the FEDERAL REGISTER, or sufficient information to identify the type of records being sought, and the approximate date the records might have been created. Any individual making a request for access to records in person shall come to the Directorate for Freedom of Information and Security Review, DFOI/SR, OASD(PA) Room 2C757, Pentagon, Washington, DC 20301-1155; and shall provide personal identification acceptable to the Director, DFOI/SR, to verify the individual's identity (e.g., driver's license, other licenses, permits, or passes used for routine identification purposes).

(9) If an individual wishes to be accompanied by a third party when seeking access to records or wishes to have the record released directly to a third party, the individual may be required to furnish a signed access authorization granting the third party access.

(10) Any individual submitting a request by mail for access to information shall address such request to the Directorate for Freedom of Information and Security Review, OASD(PA), Pentagon, Room 2C757, Washington, D.C. 20301-1155. The request shall include a signed notarized statement to verify his or her identity or an alternate verification for individuals, such as military members overseas who do not have access to notary services.

(11) The following procedures shall apply to requests for access to investigatory records:

(i) Individuals requesting access to investigatory records pertaining to themselves and for law enforcement purposes are processed under DoD 5400.11-R or DoD 5400.7-R depending on which regulation gives them the greater degree of access.

(ii) Individual requests for access to investigatory records pertaining to themselves compiled for law enforcement purposes (and in the custody of law enforcement activities) that have been incorporated into the records system, exempted from the access provisions of DoD 5400.11-R, will be processed in accordance with Section B, Chapter 5, DoD 5400.11-R. Individuals shall not be denied access to records solely because they are in the exempt system, but they will have the same access that they would receive under DoD 5400.7-R. (Also see subsection A.10., Chapter 3, DoD 5400.11-R).

(iii) Requests by individuals for access to investigatory records pertaining to themselves that are in records systems exempted from access provisions will be processed under subsection C.1. of Chapter 5, DoD 5400.11-R or DoD 5400.7-R, depending upon which regulation gives the greater degree of access. (See also subsection A.10., Chapter 3, DoD 5400.11-R).

(iv) Individual requests for access to investigatory records exempted from access under Section B, Chapter 5, DoD 5400.11-R that are temporarily in the hands of a noninvestigatory element for adjudicative or personnel actions, will be referred to the originating investigating agency. The requester will be informed in writing of these referrals.

(12) The following procedures shall apply to requests for illegible, incomplete, or partially exempt records:

(i) An individual shall not be denied access to a record or a copy of a record solely because the physical condition or format of the record does not make it readily available (e.g., deteriorated state or on magnetic tape). The document will be prepared as an extract, or it will be exactly recopied.

(ii) If a portion of the record contains information that is exempt from access, an extract or summary containing all of the information in the record that is releasable shall be prepared.

(iii) When the physical condition of the record makes it necessary to prepare an extract for release, the extract shall be prepared so that it will be understood by the requester.

(iv) The requester shall be informed of all deletions or changes to records.

(13) Medical records shall be disclosed to the individual they pertain to, unless a determination is made in consultation with a medical doctor, that the disclosure could have adverse effects on the individual's physical or mental health. Such information may be transmitted to a medical doctor named by the individual concerned.

(14) The individual may be charged reproduction fees for copies or records as outlined in DoD 5400.11-R.

(c) *Request to amend personal information in Records Systems and disputes.* (1) The Head of an OSD Component, or the designated official, shall allow individuals to request amendment to their records to the extent that such amendment does not violate existing statutes, regulations, or administrative procedures. Requests should be as brief and as simple as possible and should contain, as a minimum, identifying information to locate the record, a description of the items to be amended, and the reason for the change. A request shall not be rejected nor required to be resubmitted unless additional information is essential to process the request. Requesters shall be required to provide verification of their identity as stated in paragraph (b)(8) of this section to ensure that they are seeking to amend records pertaining to themselves, and not, inadvertently or intentionally, the records of others.

(2) The appropriate system manager shall mail a written acknowledgment to an individual's request to amend a record within 10 days after receipt, excluding Saturdays, Sundays, and legal public holidays. Such acknowledgment shall identify the request and may, if necessary, request any additional information needed to make a determination. No acknowledgment is necessary if the request can be reviewed, processed, and if the individual can be notified of compliance or denial within the 10-day period. Whenever practical, the decision shall be made within 30 working days. For requests presented in person, written acknowledgment may be provided at the time the request is presented.

(3) The Head of an OSD Component, or designated official, shall promptly take one of the following actions on requests to amend the records:

(i) If the OSD Component official agrees with any portion or all of an individual's request, he or she will proceed to amend the records in accordance with existing statutes, regulations, or administrative procedures, and inform the requester of the action taken. The OSD Component official shall also notify all previous holders of the record that the amendment has been made, and shall explain the substance of the correction.

(ii) If he or she disagrees with all or any portion of a request, the individual shall be informed promptly of the refusal to amend a record, the reason for the refusal, and the procedure established by OSD for an appeal as outlined in paragraph (c)(6) of this section.

(iii) If the request for an amendment pertains to a record controlled and maintained by another Federal agency, the request shall be referred to the appropriate agency, and the requester advised of this.

(4) The following procedures shall be used when reviewing records under dispute:

(i) In response to a request for an amendment to records, officials shall determine the accuracy, relevance, timeliness, or completeness of the requested record. The Head of an OSD Component, or designated official, shall develop tolerances for accuracy, relevance, and timeliness by giving

consideration as to whether such tolerances could result in consequences adverse to the individual.

(ii) The Head of an OSD Component, or designated official, shall limit the review of a record to those items of information that clearly bear on any determination to amend the records and shall ensure that all those elements are present before determination is made.

(5) If the Head of an OSD Component, or designated official, after an initial review of a request to amend a record, disagrees with all or any portion of a record, he or she shall:

(i) Advise the individual of the denial and the reason for it.

(ii) Inform the individual that he or she may request a further review.

(iii) Describe the procedures for requesting such review including the name and address of the official to whom the request should be directed. The procedures should be as brief and simple as possible and should indicate where the individual can seek advice or assistance in obtaining such review.

(iv) Furnish a copy of the justification of any denial to amend a record to DA&M.

(6) If an individual disagrees with the initial OSD determination, he or she may file a request for further review of the record. The request should be sent to the Director of Administration and Management, Department of Defense, The Pentagon, Washington, DC 20301-1155, if the record is created and maintained by an OSD Component.

(7) If, after review, the DA&M further refuses to amend the record as requested, the DA&M shall advise the individual:

(i) Of the refusal and the reason for it.

(ii) Of his or her right to file a statement of the reason for disagreeing with the DA&M's decision.

(iii) Of the procedures for filing a statement of disagreements.

(iv) That the statement filed shall be made available to anyone the record is disclosed to, together with a brief statement, at the discretion of the OSD Component, summarizing its reasons for refusing to amend the records.

(v) That prior recipients of copies of disputed records shall be provided a copy of any statement of dispute to the

extent that an accounting of disclosure is maintained.

(vi) Of his or her right to seek judicial review of the DASD(A)'s refusal to amend a record.

(8) If, after the review, the DA&M determines that the record should be amended in accordance with the individual's request, the OSD Component shall amend the record, advise the individual, and inform previous recipients where an accounting of disclosure has been maintained.

(9) The final OSD determination on an individual's request for a review of the DA&M's refusal to amend the record must be concluded within 30 days (excluding Saturdays, Sundays, and legal public holidays) after receipt by the proper office. If the DA&M determines that a fair and equitable review cannot be made within that time, the individual will be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

(d) *Disclosure of disputed information.*

(1) After the DA&M has refused to amend a record and the individual has filed a statement under paragraph (c)(7) of this section, the OSD Component shall clearly annotate the record so that the proceeding is clear to any authorized person to whom the record is disclosed. The notation itself shall be integral to the record. Where an accounting of a disclosure has been made, the OSD Component shall advise previous recipients that the record has been disputed, and shall provide a copy of the individual's statement where requested.

(i) This statement shall be maintained to permit ready retrieval whenever the disputed portion of the record is to be disclosed.

(ii) When information that is the subject of a statement of dispute is subsequently disclosed, the OSD Component's designated official shall note which information is disputed and provide a copy of the individual's statement.

(2) The OSD Component shall include a brief summary of its reasons for not making a correction when disclosing disputed information. Such statement

shall normally be limited to the reasons given to the individual for not amending the record.

(3) Copies of the OSD Component's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedure outlined in paragraph (c)(3) of this section.

(4) Paragraph B of Chapter 11, DoD 5400.11-R, prescribes that all requests for participation in a matching program (either as a matching agency or a source agency) be submitted to the Defense Privacy Office for review and compliance. OSD Components will submit these requests through the Records Management Division.

(e) *Penalties*—(1) *Civil action*. (i) An individual may file a civil suit against the United States for:

(A) Refusal to amend a record.

(B) Improper denial of the access to a record.

(C) Failure to maintain a record accurately.

(ii) An individual may also file a suit against the United States for failure to implement a provision of the Privacy Act when such failure leads to an adverse determination.

(iii) If the individual's suit is upheld, the court may direct the United States to pay the court costs and lawyer's fees.

(iv) When the individual can show that personal damage was done because an OSD officer or employee failed to comply with the provisions of the Privacy Act of 1974, the United States may be assessed damages by the court at a minimum of \$1,000.

(2) *Criminal action*. (i) Criminal penalties may be imposed against an OSD officer or employee for willful unauthorized disclosure of information in the records, for failure to publish a notice of the existence of a record system in the FEDERAL REGISTER, or for gaining access to the individual's record under false pretenses (i.e., against any person who knowingly and willfully requests or obtains any record concerning another individual without legal authorization).

(ii) An OSD officer or employee may be fined up to \$5,000 for a violation as outlined in paragraph (e)(2)(i) of this section.

(3) *Litigation status sheet*. Whenever a complaint citing the Privacy Act of 1974 is filed in a U.S. District Court against the Department of Defense, a DoD Component, or any DoD employee, the responsible system manager shall promptly notify the Defense Privacy Office. The litigation status sheet in DoD 5400.11-R provides a standard format for this notification. (The initial litigation status sheet shall, as a minimum, provide the information required by items 1 through 6.) A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the Defense Privacy Office with the litigation status sheet reporting that judgment or opinion.

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#### § 311.7 Procedures for exemptions.

(a) *General information*. The Secretary of Defense designates those Office of the Secretary of Defense (OSD) systems of records which will be exempt from certain provisions of the Privacy Act. There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a system of records from all but a few requirements of the Act. The specific exemption authorizes exemption of a system of records or portion thereof, from only a few specific requirements. If an OSD Component originates a new system of records for which it proposes an exemption, or if it proposes an additional or new exemption for an existing system of records, it shall submit the recommended exemption with the records system notice as outlined in § 311.6. No exemption of a system of records shall be considered automatic for all records in the system. The systems manager shall review each requested record and apply the exemptions only when this will serve significant and legitimate Government purpose.

(b) *General exemptions*. The general exemption provided by 5 U.S.C. 552a(j)(2) may be invoked for protection of systems of records maintained by